as this case shows, to dispute it at a future date. Applying the principle which I have enunciated in the preceding paragraphs, and having regard to exhibits P2, P3 and P4 I find that the plaintiffs were entitled to charge compound interest on the sums due to them under the agreement regarding land premium, annual quit rent, development bonus and royalty.

There is therefore a judgment for the plaintiffs in terms of their prayers (a) and (b) in paragraph 8 of their Statement of Claim, namely a sum of $1,362,274.61 and compound interest at 11% on this sum from January 1, 1979 to the date of payment, and also costs of this suit. The essence of compound interest is capitalisation of interest at intervals of six months or one year, as the case may be, and I cannot see the justice of further capitalisation on the date of payment. For as long as the sum in prayer (a) or any part of it remains unpaid this sum or the remaining sum should continue to carry compound interest at 11% at yearly rest. Thus logic and justice do not seem to dictate me to allow the plaintiffs' prayer (c).

Finally subject to what I said regarding prayer (c) the plaintiffs are entitled to the judgment with costs.

Order accordingly.

Solicitors: *Adnan & Wee; Joseph Tan & Tang.*

BRUNEI REPORT

CHEN FUNG YING & ORS. v. CHEE HATT SANG

[O.C.J. (Roberts C.J.) October 1, 1981]

[Bandar Seri Begawan — Civil Suits Nos. 57, 58, 59 & 69 of 1981]

Limitation — Fatal accident — Claim brought more than 12 months after death of persons — Scope of s. 3, Fatal Accidents Act 1846-1908 — Three-year period allowed by Limitation Enactment 1981 — Whether earlier provisions overruled — Fatal Accidents 1846-1908, s. 3 — The Law Reform (Miscellaneous Provisions) Act, 1934, s. 1(3) — Application of Laws Enactment 1951 — Limitation Enactment 1918, s. 3(v) — Limitation Enactment 1962, s. 5.

The present case concerns four consolidated actions against the defendant, the administrator of the estate of one Chee Hatt Kong, the driver of one of the two cars which collided on December 20, 1978. The plaintiff in the second action and driver of the car, Lim sued as administrator of the estate of one Hee, his former wife, who was killed in the said accident. The other three claims were brought by Chen and Hou, who were both passengers in the car driven by Lim, and by Lim on his own behalf, in respect of injuries sustained in the said collision.

The claim against the estate was brought one year and ten months after the grant of administration. The defendant made a preliminary objection to all four suits. He contended that all four actions were barred by effluxion of time, by virtue of the provisions of the Fatal Accidents Acts, 1846–1908 and the Law Reform (Miscellaneous Provisions) Act, 1934.

Held, dismissing the plaintiff's claims: (1) the earlier and special provisions of the Fatal Accidents Acts, giving a right where none existed before and imposing on such right of action a special limitation period, have not been affected by the later general provision;

(2) the justification for the time limits imposed by the Acts is as valid in Brunei as in the United Kingdom. The prime object of the restriction is to ensure that claims on behalf of an estate, and more particularly against an estate, shall be pursued with reasonable speed, so that the beneficiaries of the estate will be able to enjoy whatever share is due to them as soon as possible. To allow claims to be brought against the estate of deceased persons many years after death, would greatly inhibit the sensible and swift administration of their estates;

(3) on April 25, 1951, the provisions of the Fatal Accidents Acts and of the Law Reform Act, *in toto* and unamended, became part of the law of Brunei. The periods of limitation contained in the Fatal Accidents Acts and the Law Reform Act are preserved by section 5 of the Limitation Enactment 1962. Consequently none of the other provisions of the 1962 Enactment are applicable to claims which are based upon the Fatal Accidents Acts or the Law Reform Act;

(4) therefore the four claims were barred and no action could be maintained against the defendant.

Per curiam: "The limitation Enactment itself ... is based on an Indian Act which is more than 70 years old. It has clearly fallen badly behind English law which, since 1951, has lengthened the period during which an action can be brought under the Fatal Accidents Act to three years and may ... also have amended section 1(3)(c) of the Law Reform Act. Furthermore, the discretion which was conferred on a court by the Limitation Enactment 1918, to permit an action to proceed outside the limitation period in a proper case, has been conferred upon the courts in England by the 1975 Limitation Act. I suggest for the Attorney-General's consideration, that a discretion of this kind might be conferred on the Brunei Courts, so as to enable them to extend the period in the exceptional case."

Cases referred to:-

(1) *Jaafar bin Metali* v. *Sadiah bte Gunti* Civil Appeal No. 1 of 1978 *(unreported).*

(2) *See Ang Chong* v. *Awang Moktar bin Yusof* Civil Suit No. 60 of 1967 *(unreported).*
(3) *The Vera Cruz* (1884) 10 A.C. 59, 68.
(4) *The Danube II* [1921] P. 183.
(5) *Airey* v. *Airey* [1958] 2 All E.R. 571.
(6) *Shaik Sahied bin Abdullah Bajerai* v. *S.S.T. Sockalingam Chettiar* [1933] M.L.J. 81.

CIVIL SUITS.

D. Teo for the plaintiffs.

F.S. Choo (*T.C. Chan* with him) for the defendant.

Roberts C.J.: All four actions, which I ordered should be consolidated, arose from the same collision between two motor vehicles, which occurred on December 20, 1978.

In the second of these four consolidated actions, the plaintiff, Lim Kian Choon, sues as the administrator of the estate of the late Hee Lai Kiu, his former wife, who was killed in that accident, when a car driven by the plaintiff came into collision with another vehicle driven by Chee Hatt Kong, the administrator of whose estate is the defendant in all four actions.

The other three claims are brought by Chen Fung Ying and Hou Yee Tian, who were both passengers in the car driven by Lim Kian Choon, and by Lim Kian Choon on his own behalf, in respect of injuries which was sustained by each of them in the same collision. In the pleadings in each suit, preliminary objections in law have been pleaded, asserting that all four actions are barred by the effluxion of time, by virtue of the provisions of the Fatal Accidents Acts, 1846-1908 and the Law Reform (Miscellaneous Provisions) Act, 1934 ("the Law Reform Act").

The accident which gave rise to these claims took place on December 20, 1978. Hee Lai Kiu, for the benefit of whose estate Suit No. 58 of 1981 was brought, died on the same date. The Writ, accompanied by a statement of claim seeking damages on behalf of her dependants under the Fatal Accidents Acts and for the benefit of the estate under the Law Reform Act was issued on March 28, 1981, as were the Writs in the other 3 claims. This date is rather more than 2 years and 3 months after the death of Hee Lai Kiu.

Chee Hatt Kong, whose administrator is the defendant in all the four actions, died on December 20, 1978, as a result of injuries suffered in the same collision. Letters of Administration were granted to the defendant, Chee Kong Sang on May 22, 1979. So the claim against the estate was brought about one year and 10 months after the grant of administration.

The defendant argues that the claim brought on behalf of the estate of the deceased Hee Lai Kiu, by Civil Suit No. 58 of 1981, is barred by section 3 of the Fatal Accidents Act, 1846, which states that an action brought under the Fatal Accidents Acts is barred, unless it is brought within 12 months of the death of the person for the benefit of whose dependants the action is brought. He also contends that all four claims are in any event barred by section 1(3), of the Law Reform Act which bars any proceedings against the estate of the deceased person unless the cause of action arose not earlier than 6 months before the death, and proceedings are instituted not later than 6 months after the date on which representation of the estate is taken out. The Court of Appeal for Brunei decided in Civil Appeal No. 1 of 1978, *Jaafar bin Metali* v. *Sadiah bte. Gunti,*[1] that the Fatal Accidents Acts, 1846-1908 and the Law Reform (Miscellaneous Provisions) Act, 1934, apply to the State by virtue of the Application of Laws Enactment, 1951. The relevant section of this Enactment, which came into force on April 25, 1951, reads as follows: —

"Subject to the provisions of this Enactment and save in so far as other provision has been made or may hereafter be made by any written law in force in the State, the common law of England and the doctrines of equity, together with statutes of general application, as administered or in force in England at the commencement of this Enactment, shall be in force in the State:

Provided that the said common law, doctrines of equity and statutes of general application shall be in force in the State so far only as the circumstances of the State and of its inhabitants permit and subject to such qualifications as local circumstances and native customs render necessary."

The Court of Appeal also ruled, in the same appeal, that any amendments made subsequently to April 25, 1951 by English Statute to the Fatal Accidents Acts, would not apply in the State, unless they were specifically adopted by Brunei Law. Since there has been no such adoption, the provisions of the Law Reform Limitation of Actions Act, 1954, which extended the period of 12 months after the death of the deceased within which Fatal Accidents claims may be brought, to 3 years have not been adopted in Brunei. However, this is not by any means the end of the matter. Counsel for the plaintiffs has argued that, in relation both to the Fatal Accidents Act and to the Law Reform Act those provisions which limit the periods with which actions under them may be brought have been varied by "other provision made by written law in force in the State". In support of this proposition, he cited the case of *See Ang Chong* v. *Awang Moktar bin Yusof*[2] in which Pickering J. decided that the limitation period of 12 months prescribed by section 3 of the Fatal Accidents Act, 1846, did not apply in the State because other provision had been made by a written law in force in the State, that is to say by the Limitation Enactment, 1918, which Enactment was still in force on April 25, 1951, though it was repealed *in toto* and replaced by the Limitation Enactment, 1962 which came into force on September 1, 1967.

Section 3(v) of the Limitation Enactment, 1918, gave a discretion to the High Court to dismiss "any suit for damages or loss sustained, unless instituted within a period of 3 years, computed from the time when the damage was done or the loss sustained." Having accepted that by virtue of the Application of Laws Enactment, 1951, the Fatal Accidents Acts, 1846-1908 were in force in Brunei, Pickering J. nevertheless, came to a conclusion that since section 3(v) of the Limitation Enactment, 1918 made specific provision for a three year period of limitation in relation to any suit for damages or loss, it should prevail over the 12 month period contained in section 3 of the Fatal Accidents Act, 1846. If I were to follow his decision, the preliminary objection, so far as it relates to Fatal Accidents Act claims, would fail. But counsel for the defendant has argued that I should not do so, and that Pickering J. was wrong to decide that

the general provisions of the Limitation Enactment, 1918, should be regarded as overruling the specific limitation period contained in section 3 of the Fatal Accidents Act, 1846.

His main argument, was based on a quotation from the judgment of Selborne L.C. in *"The Vera Cruz"*(3) —

"where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from, merely by force of such general words, without any indication of a particular intention to do so."

In support of this general contention, he cited *The Danube II.*(4) This was a claim brought against naval officers for damage by collision. By virtue of the Public Authorities Protection Act, 1893, an action was only maintainable against a servant of the Crown, acting in the scope of his public duties, within 6 months of the cause of action arising.

The Maritime Conventions Act, 1911, however, permitted an action to be brought against a vessel or her owners in respect of damage to another vessel, if it was commenced within 2 years. The Court of Appeal ruled that the shorter period prescribed by the earlier Act, giving special protection to a limited class of persons, that is to say, Crown servants, should prevail over the general provision of the later Act, which permitted claims of a certain period to be brought within a 2 year period.

I was referred also to the more recent case of *Airey* v. *Airey.*(5) In this case, the respondent sustained injuries in an accident caused by the negligent driving of the deceased, who was killed in the accident. The appellant took out letters of administration of the deceased's estate after the accident. The respondent issued a writ outside the 6 year period permitted for personal injury actions, but within 6 months of the letters of administration being granted to the appellant.

The Court of Appeal in England decided that the six year limitation period, provided in general terms for personal injury claims by the Limitation Act, 1939, was over-ridden by the special provisions of the Law Reform (Miscellaneous Provisions) Act, 1934, which allowed the action to be brought within 6 months after representation of a deceased's estate was taken out.

Reference was also made by counsel to the Privy Council case of *Shaik Sahied bin Abdullah Bajerai* v. *S.S.T. Sockalingam Chettiar*(6) in support of the proposition that that Pickering J. was wrong to import part of the Fatal Accidents Acts and not all of them. He cited the following passage from Lord Atkin's judgment at page 83 — In considering whether or not English mercantile law had been imported into the law of Singapore, by a general provision not unlike that contained in the Brunei Application of Laws Enactment, he said: —

"Counsel for the appellant preferred to meet this construction of the statute on narrower ground. The Acts, he said are to be applied in Singapore; but *lex non cogit ad impossibilia,* and if some of the provisions are found there to be impossible of performance e.g. registration, then there will be no duty to obey them. But such parts as are possible, as the provisions in section 6, are incorporated into the law of Singapore. The whole Act is shipped to Singapore, but parts of it cannot be landed and are dumped in the harbour; and the rest is imported. Their Lordships cannot accept this contention. The Act must be judged as a whole, and if it is bound to be restricted to regulation of activities in England and not to be capable of general application, it is not within the scope of the Ordinance at all. To take one or two sections of such an Act, divorced from their context is to apply a new law, which is not the law of England, and so abstracted might never have been introduced into England at all."

I accept that the effect of that decision is that if an English Act is to be deemed to have been imported into Brunei, by virtue of the 1951 Enactment, the whole of the English Act or none of it would be so imported. This does not, however, mean that a subsequent written law enacted in Brunei may not amend the English Act which has been imported as a whole, so as to leave only parts of it thereafter in force. I see, therefore, no objection in principle to the method view reached by Pickering J. that it is possible for only part of an English Act to be in force in Brunei, provided that originally the whole Act was incorporated into Brunei law and part of it was later excised by some Brunei Enactment.

However, in view of the cases which I cited, to the effect that the special limitation periods prescribed by the Fatal Accidents Act, 1846 and the Law Reform Act are not over-ridden by general provisions — whether these be later or earlier, — I am persuaded that I should not follow Pickering J.'s conclusion that section 3 of the Fatal Accidents Act, 1846 was overruled by the Limitation Enactment, 1918. In my opinion, the earlier and special provisions of the Fatal Accidents Acts, giving a right where none existed before and imposing on such right of action a special limitation period, have not been affected by the later general provision.

The plaintiff also argued that the limitation periods in the Law Reform Act and the Fatal Accidents Acts had not been imported into the State by virtue of the 1951 Act, because the circumstances of the State and of its inhabitants make this inappropriate. I must confess that I see no force in this argument.

The justification for the time limits imposed by these Acts is surely as valid here as in the United Kingdom. The prime object of the restriction is to ensure that claims on behalf of an estate, and more particularly against an estate, shall be pursued with reasonable speed, so that the beneficiaries of the estate will be able to enjoy whatever share is due to them as soon as possible. To allow claims to be brought against the estate of deceased persons many years after death, would greatly inhibit the sensible and swift administration of their estates.

I therefore conclude that, on April 25, 1951, the provisions of the Fatal Accidents Acts and of the Law Reform Act, *in toto* and unamended, became part of the law of Brunei. In 1962, the Limitation Enactment was passed, although it was only brought into force with effect from September 1, 1969. That Enactment repealed the Limitation Enactment of 1918. There is no reference within the Limitation Enactment of 1962 either to the Fatal Accidents Act or to the

Law Reform Act. Section 5 of the 1962 Enactment, however, preserves any law whereby a period of limitation is especially prescribed for any suit, and states that nothing in the 1962 Enactment shall affect the period so prescribed.

I find that the periods of limitation contained in the Fatal Accidents Acts and the Law Reform Act are preserved by section 5 of the Limitation Enactment, 1962, and that, consequently, none of the other provisions of the 1962 Enactment are applicable to claims which are based upon the Fatal Accidents Acts or the Law Reform Act. It necessarily follows from this conclusion that the four claims are barred and that no action is maintainable against the estate of the defendant in any of them.

I think I ought to take this opportunity of drawing the attention of the Attorney-General to the somewhat unsatisfactory state of personal accident law in the State. The Limitation Enactment itself, as I was informed by counsel, is based on an Indian Act which is more than 70 years old. It has clearly fallen badly behind English law which, since 1951, has lengthened the period during which an action can be brought under the Fatal Accidents Act to 3 years and may, I think, also have amended section 1(3)(c) of the Law Reform Act.

Furthermore, the discretion which was conferred on a court by the Limitation Enactment, 1918, to permit an action to proceed outside the limitation period in a proper case, has been conferred upon the Courts in England by the 1975 Limitation Act. I suggest for the Attorney-General's consideration, that a discretion of this kind might be conferred on the Brunei Courts, so as to enable them to extend the period in the exceptional case.

As the law now stands, I have no alternative but to dismiss these claims with costs.

Claims dismissed.

Solicitors: *Choo Chan & Wong; Ibrahim & Chee.*